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REPORT
99-794

INTERNATIONAL DRUG TRAFFIC ENFORCEMENT ACT

AUGUST 15, 1986.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

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together with

DISSENTING VIEWS

[To accompany H.R. 5410]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 5410) to facilitate the enforcement of the customs laws against illegal drug traffic, to deter the production of illegal drugs by foreign countries, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill to pass.

BACKGROUND AND PURPOSE

H.R. 5410, the International Drug Traffic Enforcement Act, seeks to respond to the serious problem of illegal drug smuggling and the growing threat to this country from foreign sourced drug production. The legislation revises many of our basic customs laws which deter illegal drug imports (many of which have not been revised for over 50 years); it significantly increases the manpower and equipment of the U.S. Customs Service to wage a more effective campaign against drug smugglers; and it creates new authority for the President to take appropriate trade actions against countries that fail to cooperate with the United States in eradicating drug crops and apprehending drug smugglers.

These changes would have a significant impact on the flow of drugs into the United States, which has increased to alarming rates over the past decade. The Customs Service concedes that it is

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now only possible to apprehend a very small portion of the narcotics entering the United States. Much of the problem stems from inadequate resources: there are only enough personnel to operate the air interdiction program 8 hours a day; vast sections of our southwest border have no radar capabilities; the Customs Service has only 6 interceptor aircraft in its entire fleet; communications equipment is so deficient that Customs aircraft and ground agents cannot communicate with one another on a secure channel; and, against a backdrop of hugh increases in the flow of illegal narcotics into this country, the Customs Service has fewer people today then it did in 1980.

Another aspect of the problem is the antiquated state of our customs laws designed to deter smuggling. Penalties for failure to observe certain regulations are insignificant, and many of the clearance procedures actually favor the drug smuggler. For example, provisions of the Tariff Act dating back to 1930 allow arriving vessels to wait 24 hours before reporting their arrival to Customs. This affords smugglers an opportunity to unload their cargo and still avoid any liability under the customs laws. By tightening this provision and imposing penalties for failure to report immediately, the Customs Service will be able to focus its enforcement efforts on those most likely to be smugglers, since those involved in lawful trade will be more likely to comply with the immediate reporting requirement. There are a number of antiquated provisions such as this, and the Committee believes it is essential that we modernize these laws and give our customs officials better legal weaponry to fight drug smuggling.

A final aspect of the problem is the reluctance of some drug source countries to adequately control illegal crop production and smuggling activities. Many countries are reluctant to devote further resources to this effort, yet are also fearful of allowing U.S. officials to play a prominent role because it might be politically unpopular to do so. Unfortunately, some countries are reluctant to crack down for economic reasons; illegal drug exports represent a substantial segment of their economy and they find it expedient to tolerate this deadly trade. Greater economic pressures must be brought to bear on such countries. The Committee believes that it is entirely appropriate to tie lucrative tariff benefits—an important trade concession to these countries—to their cooperation in eliminating drug traffic.

The Committee bill is intended to address the problems and deficiencies discussed above. It contains numerous revisions in our customs laws to strengthen drug enforcement. These amendments would add new penalties and reporting requirements to the Tariff Act, enable Customs to engage in undercover activities more freely, place new controls on vehicles or vessels arriving in the United States in order to deter smuggling, expand the Customs Forfeiture Fund to finance drug interdiction efforts, and impose stiffer criminal penalties (including mandatory prison terms) on drug smugglers. The bill would also authorize over $300 million in new personnel and equipment to step up the Customs Service's war on illegal drugs. This would include a complete modernization of the agency's air and marine interdiction equipment and a sizable in-

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crease in border agents. Finally, the bill requires the President to impose trade sanctions on uncooperative drug source nations.

The Committee recognizes that attacking drugs at the source or at the point they enter the United States would be only one part of a comprehensive federal effort to reduce America's drug problem. The cumulative effect of these measures would not be to percentage of the Nation's illegal drug supply does come from foreign sources (perhaps as much as 95 percent of the cocaine, for example). Increased pressure on foreign governments and increased enforcement at the border should substantially diminish supplies and drive up prices. This may help to reduce the incidence of "recreational" drug use, and, ultimately, it is from the ranks of casual users that hard-core addicts are usually drawn. Moreover, the increase in interdiction may put many "small-time" smugglers out of business and make it much more difficult for professional smugglers to escape detection.

In the final analysis, the war against drugs must be fought on many fronts. It must involve not just interdiction, but education, rehabilitation, and a far higher level of citizen participation and awareness. The Committee believes, however, that the provisions of this bill are an important component in any overall program, and that the modest expenditures called for here are more than justified by the scope of the problem confronting the Customs Service.

SUMMARY OF H.R. 5410, THE INTERNATIONAL DRUG TRAFFIC ENFORCEMENT ACT

H.R. 5410 as ordered reported by the Committee on Ways and Means consists of three titles: Title I contains amendments to the Tariff Act of 1930 which strengthen Customs' enforcement capability to detect and apprehend smugglers and to interdict narcotics. It increases civil and criminal penalties for violations of Customs drug laws. Title I also extends the Customs Forfeiture Fund, increases the ceiling, and expands the list of expenses which can be paid for out of the fund.

Title II authorizes appropriations for the U.S. Customs Service at a level to maintain current operations and provides an additional authorization dedicated to enhancing the drug interdiction program. Title II also includes miscellaneous provisions to extend the reporting requirement to vessels involved in transshipment on the high seas, to clarify reporting requirements for recreational vessels, to amend requirements and penalities relating to assistance for customs officers, to prohibit possession of controlled substances on U.S. aircraft within 12 miles of the United States, and to set increased penalties for possession of controlled substances.

Title III, the Narcotics Control Trade Act, requires the President to determine whether any country is an uncooperative drug source nation based on certain criteria. This title also requires the President to take meaningful action by denying trade benefits or imposing additional tariffs for any country so determined.

Section 1. Short title

"International Drug Traffic Enforcement Act of 1986."

TITLE I—AMENDMENTS OF THE TARIFF ACT OF 1930

Subtitle A—Reference to the Tariff Act of 1930

Section 101. Reference

Section 101 provides that, unless otherwise specified, all references in Title I are to title IV of the Tariff Act of 1930.

Subtitle B—General Provisions

Section 111. Prohibition on importation of drug paraphernalia

Section 111 adds to section 306A a prohibition on the importation of drug paraphernalia unless imported for medical or scientific needs.

Section 112. Definitions

Section 112 amends section 401 to include "monetary instructions" and clarifies that the term "controlled substance" has the same meaning as in the Controlled Substances Act.

Section 113. Report on arrival of vessels, vehicles, and aircraft

Section 113 amends section 433 to require immediate rather than 24 hour reporting of all vessels, vehicles, and aircraft. It allows the Secretary of the Treasury to determine the place and manner of reporting and to extend reporting time if necessary. This section also prohibits departures or discharge of persons or any articles without Customs approval and requires the master, pilot or person in charge to present such documents, papers or manifests as the Secretary may require.

Section 114. Penalties for arrival, reporting, entry, and departure violations

Section 114 amends section 436 to establish uniform criminal penalties and provide for civil penalties for failure to comply with section 433.

Section 115. Increase in penalties for unauthorized unloading of passengers

Section 115 amends section 454 to raise civil penalties for illegal discharge of passengers.

Section 116. Reporting requirements for individuals

Section 116 amends section 459 to require pedestrians to report to Customs immediately and remain until cleared. It also requires pedestrains to cross into the United States only at approved crossings. Persons aboard conveyances are required to remain abroad the conveyance until cleared. If they depart the conveyance they have an obligation to report to Customs. If the conveyance was not properly reported, all persons aboard have an independent obligation to report to Customs and to report the circumstances of their arrival. Section 116 also increases civil penalties and imposes criminal penalties for the first time for section 459 violations.

Section 117. Examination of books and witnesses

Section 117 amends section 509 to expand the scope of Customs administrative summons to include statements, declarations, or documents regarding which there is probable cause to believe they pertain to merchandise the importation of which is prohibited as well as for documents required to be kept under section 508.

Section 118. Penalties for falsity or lack of manifest

Section 118 amends section 584 to increase penalties for manifest violations and drugs on board conveyances and to repeal the pre-penalty procedure in manifesting violations.

Section 119. Penalties for unlawful unlading and transshipment

Section 119 amends section 586 to increase penalties for illegal transfers and transshipments of merchandise. It also changes the geographical limits of the statute from 12 miles to "customs waters."

Section 120. Aviation smuggling

Section 120 adds a new section 590 to close some of the loopholes in aviation smuggling laws by prohibiting "drops" to vessels, by providing for forfeiture for smuggling acts whether or not drugs are found aboard, by providing civil and criminal penalties for violations, and by creating certain rebuttable presumptions of an intent to unlawfully transship merchandise.

Section 121. Seizures

Section 121 makes conveyances, including common carriers, subject to seizure for transporting items in containers which are not properly manifested unless the owner, operator, master, pilot, or other employee responsible for maintaining and issuing the accuracy of the cargo manifest knew, or by the exercise of the highest degree of care and diligence could have known, that such merchandise was on board. Exceptions are provided for merchanise contained on the person or in the baggage of a passenger, or in properly manifested cargo.

Section 122. Searches and seizures

Section 122 amends section 595 to expand the Customs civil search and seizure warrant to permit its use in seizing any article subject to seizure under laws enforced by Customs. It is specified that, in case of violations of section 592, Customs may obtain a warrant only if there is probable cause to believe fraud is involved.

Section 123. Forfeitures

Section 123 amends section 596 to permit the civil seizure and forfeiture of merchandise introduced or attempted to be introduced contrary to law, other than in violation of section 592.

Section 124. Disposition of proceeds of forfeited property

Section 124 amends section 613 to treat mitigated forfeiture payments in the same manner as the proceeds of sale and to treat seizure and forfeiture expenses incurred by customs as priority costs.

Section 125. Compensation to informers

Section 125 amends section 619 to permit informers awards to be determined in amounts up to 25 percent in lieu of the present mandatory 25 percent. It provides that informers awards be treated as an "expense of the forfeiture" for purposes of the Customs Forfeit Fund. This section also allows for rewards to informers regardless of whether duties, fines, or penalties can be levied or property forfeited.

Section 126. Commencement of actions

Section 126 amends section 621 to provide that the statute of limitations in civil cases runs from the time that the penalty notice is issued rather than the time court action is instituted.

Section 127. Foreign landing certificates

Section 127 amends section 622 to clarify that landing certificates may be required to meet international obligations, such as agreements to reduce or prevent smuggling, as well as to protect the revenue.

Section 128. Exchange of information with foreign agencies

Section 128 adds a new section 628 to clarify the authority of the Secretary to exchange information with foreign customs and law enforcement officials.

Section 129. Inspections and preclearance in foreign countries

Section 129 adds a new section 629 to permit customs officers to be stationed in foreign countries and to extend U.S. Customs laws to foreign locations when permitted by treaty, bilateral agreement or foreign law.

Section 130. Investigations; oath; subpenas; etc.

Section 130 amends the Secretary's subpoena authority to make administrative subpoena available in currency investigations. These provisions previously applied only to drug investigations.

Section 131. Undercover investigative operations of the Customs Service

Section 131 adds a new section 630 to the Tariff Act to provide exemptions from certain laws for activities involving a commercial cover in authorized investigative activities.

Section 132. Effective date.

Amendments made by this subtitle will take effect the fifteenth day after enactment.

Subtitle C—Customs Forfeiture Fund

Section 141. Customs forfeiture fund

Section 141 amends section 613A to extend the operation of the Customs Forfeiture Fund until September 30, 1991; increase the ceiling on authorized appropriations from the fund from $10 mil-

lion to $20 million; and expand the list of expenses which can be paid for out of the Fund to include:

(1) investigative costs leading up to seizures;

(2) the costs of equipping for law enforcement functions vessels, vehicles and aircraft in Customs' possession (the law currently only allows for such expenditures for forfeited vessels, vehicles and aircraft);

(3) the cost of reimbursing private citizens for expenses incurred in cooperating with the Customs Service in law enforcement operation; and

(4) the cost of publicizing the availability of rewards.

TITLE II—CUSTOMS SERVICE AUTHORIZATIONS, MISCELLANEOUS CUSTOMS PROVISIONS, AND AMENDMENTS TO THE CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT

Subtitle A—Customs Service Authorization

Section 201. Authorization of appropriations for fiscal year 1987 for the United States Customs Service

Section 201 authorizes $749.1 million for salaries and expenses to maintain current operating levels, $99.3 million for salaries and expenses of additional personnel to be used in carrying out drug enforcement activities, and $296.7 million for the operation and maintenance of the air interdiction program, for a total authorization of $1,145,131,000 for the Customs Service for fiscal year 1987.

Subtitle B—Miscellaneous Customs Amendments

Section 211. Treatment of hovering vessels

Section 211 amends 19 U.S.C. 1432a to extend the reporting requirements to vessels involved in transshipment on the high seas or in Customs waters.

Section 212. Recreational vessel licenses

Section 212 amends 46 U.S.C. 12109 to make it clear that pleasure yachts are only exempt from formal entry and clearance but must comply with the other customs laws.

Section 213. Assistance for Customs officers

Section 213 amends RS 3071 (19 U.S.C. 507) to allow Customs officers to demand the assistance of any person regardless of distance and raises the penalty for refusal to assist, without reasonable excuse, to $1,000. This section also provides "Good Samaritan" defense to any person, not employed by the Federal Government, assisting Customs.

Subtitle C—Amendments to the Controlled Substances Import and Export Act

Section 221. Possession, manufacture, or distribution for purposes of unlawful importation

Section 221 amends section 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 959) to prohibit a U.S. citizen or any person on a U.S. aircraft from possessing or transporting controlled substances into waters within 12 miles of the United States.

Sections 222–226. Penalties for drug traffickers

Sections 222–226 of the bill make a number of amendments to the Controlled Substances Import and Export Act to significantly stiffen the applicable penalties and reduce the actionable quantities of narcotics in import-related drug trafficking cases.

TITLE III—DENIAL OF TRADE BENEFITS TO UNCOOPERATIVE DRUG SOURCE NATIONS

Section 301. Short title

"Narcotics Control Trade Act."

Section 302. Determinations regarding uncooperative drug source nations

Section 302 requires the President to determine if any foreign country is a direct or indirect source of illicit drugs that are significantly affecting the United States; and has not cooperated with the United States Government to prevent these illicit drugs from significantly affecting the United States. In making the determination, the President shall consider the efforts, capability, and progress made by such country. The President shall make a report to Congress regarding each country for which an affirmative determination is made.

Section 303. Tariff treatment of products of uncooperative drug source nations

Section 303 requires the President to take actions against countries determined to be uncooperative drug source nations, which may include denial of preferential tariff treatment, application of increased duties not to exceed 50 percent ad valorem, application of additional duties of not to exceed 50 percent ad valorem, or any combination of these actions for any or all products of that country.

Section 304. Progress reports

Section 304 requires the President to report annually an evaluation of efforts and progress made by governments in principal drug source nations, whether or not an affirmative determination has been made under section 302(a) regarding those countries.

Section 305. Cancellation of determinations

Section 305 requires the President to cancel the determination made under section 302(a) prior to the restoration of column 1 rates of duty or preferential tariff treatment.

Section 306. Definition

Section 306 defines "narcotic and psychotropic drugs and other controlled substances" as in the Foreign Assistance Act.

Section 307. Conforming amendments

Section 307 makes conforming amendments to section 502(b) of the Trade Act of 1974 and section 212(b) of the Caribbean Basin Economic Recovery Act.

COMMITTEE ACTION

On August 5, the Subcommittee on Trade held a hearing on H.R. 5310, a predecessor bill. Testimony was received from invited witnesses.

On August 7, the Committee by voice vote approved and ordered introduced a revised bill, which was introduced on August 13. The Committee also ordered such bill to be favorably reported as introduced.

SECTION-BY-SECTION ANALYSIS, JUSTIFICATION, AND COMPARISON WITH PRESENT LAW

Section 1. Short title

This Act may be cited as the "International Drug Traffic Enforcement Act."

TITLE I—AMENDMENTS TO THE TARIFF ACT OF 1930

Subtitle A—Reference to the Tariff Act of 1930

Section 101. Reference

Section 101 of the bill provides that, unless otherwise specified, all references in Title I are to Title IV of the Tariff Act of 1930.

Subtitle B—General Provisions

Section 111. Prohibition on importation of drug paraphernalia

Section 111 of the bill adds to section 306A a prohibition on the importation of drug paraphernalia unless imported for medical or scientific needs. The term "drug paraphernalia" is defined by a listing of specific items to be prohibited and by a more generic standard to be applied to prohibit any items which are used toward the end of introducing marijuana, hashish, hashish oil, or cocaine into the human body. Under current law, Customs has no authority to prevent the importation of such paraphernalia notwithstanding the fact that such articles are obviously intended to be used for illegal purposes.

While the Committee intends to prohibit importation of drug paraphernalia designed primarily for the consumption of drugs, imports of paraphernalia primarily used for tobacco smoking are not prohibited. For example, the Committee does not intend to ban imports such as calabash, briar, meerschaum, or other pipes commonly used and designed for tobacco consumption.

Section 112. Definitions

Section 112 of the bill amends section 401 to extend the definition of "merchandise" to include "monetary instruments." It further clarifies that the term "controlled substance" has the same meaning for purposes of title 19 as in the Controlled Substances Act and that the importation of such controlled substances are prohibited unless specifically authorized by the appropriate license or permit or the Controlled Substances Import and Export Act.

Section 113. Report of arrival of vessels, vehicles, and aircraft

Section 113 of the bill combines the existing section 433 reporting requirements for vessels from noncontiguous countries and vessels over five net tons from contiguous countries with the reporting requirements under existing section 459 for vehicles and vessels under five net tons from contiguous countries and section 1109 of the Federal Aviation Act of aircraft in order to provide uniform reporting requirements for all modes of transportation.

Section 433 of the Tariff Act, as amended by this provision, provides a new paragraph (a) which requires the master of any vessel arriving from a foreign port or place, or of a foreign vessel arriving from a domestic port, or a vessel of the United States carrying bonded merchandise or foreign merchandise for which entry has not been made, to immediately report arrival of the vessel at the nearest customhouse or such other place as the Secretary of the Treasury may prescribe in regulations.

New paragraph (b) replaces the existing vehicle reporting requirements of section 459 to require crossing only at designated facilities and immediate reporting of vehicle arrivals.

Finally, paragraph (c) provides similar requirements for aircraft and thus subjects them to specific penalties provided under section 436 rather than the more general (and lighter) penalties contained in 49 U.S.C. 1474.

In recent years, the use of all types of conveyances to smuggle narcotics and dangerous drugs has created a significant detection and interdiction problem for the Customs Service. The existing law contributes to this problem because, with the exception of small vessels arriving from Canada or Mexico, the law permits 24 hours in which to report arrival of a vessel, even though all other conveyances must immediately report to Customs, and some aircraft must even notify Customs prior to entering U.S. airspace. In addition, vehicles may cross into the United States at any point along the border, the only requirement being that *after* crossing, they report to the *nearest* Customs facility. Thus, a narcotics smuggler using a vessel or vehicle can arrive in the United States without facing the prospect of an immediate Customs inspection and discovery of contraband. Although this problem has become particularly acute in Florida where pleasure yachts and small commercial vessels with easy access to nearby foreign islands and the U.S. inland waterways complicate detection, the reporting problem is also present along the entire east and west coasts where small commercial vessels and pleasure craft are used to ferry loads between the so-called "mother-ships" which hover off the coast and the numerous inlets and bays which line our shores.

The amendment to section 433 would, in paragraph (d), authorize the Secretary of the Treasury to require the master of a vessel, the person in charge of a vehicle, or aircraft pilot to report immediately (in person or by radio or other means as prescribed in the regulations) and would also afford greater flexibility in designating the places where arrival may be reported. Customs would, thus, be in a position to concentrate enforcement activities on those conveyances failing to report immediately to the designated facility, on the assumption that they are liable to be involved in smuggling.

Paragraph (e) prohibits departure or discharge of persons or merchandise without Customs' approval.

Section 114. Penalties for arrival, reporting, entry, and departure violations

Section 114 of the bill establishes, in addition to existing criminal sanctions, uniform civil penalties for violations of the arrival, entry, and reporting requirements in sections 433, 434, and 435 of the Tariff Act, and provides for the seizure and forfeiture of any conveyances used in connection with these violations. These penalties are subject, in appropriate cases, to mitigation or remission under section 618 of the Tariff Act (19 U.S.C. 1618). The amount of the criminal fines which may be imposed has also been increased.

Section 115. Increase in penalties for unauthorized unloading of passengers

Section 115 of the bill amends section 454 of the Tariff Act to increase the penalties for discharging passengers without a permit from $500 for each passenger to $1,000 for the first passenger and $500 for each additional passenger.

Section 116. Reporting requirements for individuals

Section 116 of the bill amends section 459 of the Tariff Act to clarify the existing law, to require all persons arriving in the United States as pedestrians or by means other than by vessel, vehicle, or aircraft (horseback, for example) to immediately report their arrival to a designated Customs facility. Persons on aboard conveyances are required to remain aboard until authorized by Customs to depart. Present law only requires the master or person in charge to keep persons on board but imposes no obligations on the passengers or crew members themselves. An incident at a New York airport involving a near riot after a delayed landing showed the weaknesses of existing law. In addition, passengers and crew members arriving aboard conveyances which did not report arrival in accordance with section 433 are also required to notify Customs and report the circumstances of their arrival.

Section 116 also increases substantially the civil penalties for failure to report to Customs or proceeding without permission. Of course, all the penalty and forfeiture provisions are subject to remission or mitigation for cause under section 618 of the Tariff Act. The section also establishes criminal penalties similar to those presently contained in section 433 of the Tariff Act for reporting violations. Because civil and criminal penalties are moved to section 459, section 460 is repealed.

Section 117. Examination of books and witnesses

Section 117 of the bill expands the scope of Customs administrative summons for documents. Presently, section 509 of the Tariff Act allows a summons to be used to ascertain the correctness of entries, determine liability for duties and taxes, fines and penalties, and to insure compliance with any law administered by the Customs Service. Although the summons can be used to take testimony under oath in connection with an investigation of any of these areas, it can only be used to obtain those documents which are "required to be kept" pursuant to section 508. It is thus unavailable to obtain documents which were prepared by third persons, by the importer subsequent to the import transaction, or which pertain to a law administered by Customs but not directly related to imports, such as drawback shipping records, or currency transactions or export records.

This provision would amend section 509 to expand the scope of Customs administrative summons to include statements, declarations, or documents regarding which there is probable cause to believe pertain to merchandise the importation of which is prohibited. Although the Customs Service had sought the complete elimination of the limitation regarding records "required to be kept under section 508," the Committee believes that this provision balances Customs' legitimate enforcement needs with private industry's right not to be subjected to "fishing expeditions" into its records. Thus, the provision would maintain the limitation regarding "records required to be kept under section 508" for commercial transactions unless Customs has probable cause to believe that other records pertain to the importation of prohibited merchandise. For purposes of this provision, the term "merchandise the importation of which is prohibited" is intended to cover controlled substances and other types of contraband but is not intended to cover commercial importations which are subject to restrictions such as a quantitative limitation.

Section 118. Penalties for falsity or lack of manifest

Section 118 of the bill amends section 584 of the Tariff Act to substantially increase penalties relating to unmanifested drugs and other merchandise. This section would also eliminate the prepenalty procedures which are added in 1978 but which have proven to be of little benefit to the public or the Government.

The penalties for unmanifested opium of $25 an ounce were first set in 1922 and the penalties for other controlled substances have been set at $10–$50 an ounce (depending on the drug) since 1935. In order to increase vigilance on the part of carriers, this section raises penalties to $200–$1,000 an ounce.

Section 431 of the Tariff Act of 1930 (19 U.S.C. 1431) requires the master of the vessel and any person in charge of any vehicle arriving in the United States to keep on his ship or vehicle a manifest in form prescribed by the Secretary of the Treasury. The manifest must be signed by the master (or person in charge of the vehicle) under oath as to the truth of the statements it contains. Under section 584 of the Tariff Act (19 U.S.C. 1584), the penalty for an error in the manifest is a penalty equal to the lesser of $10,000 or the

domestic value of the goods to which the error relates. The Customs Service uses the manifest primarily to insure that all goods in the cargo are ultimately entered or otherwise appropriately disposed of under the customs laws.

The Customs Procedural Reform and Simplification Act of 1978 (Public Law 95–410, 92 Stat. 888) amended section 584 to: (1) extend liability for an error in the ship's manifest to those persons directly or indirectly responsible for the error, including the importer or broker, (2) to require a prepenalty notice of any proposed penalty greater than $500, and (3) require the Customs Service to consider representations made as a result of the notice before issuing a penalty claim. It was believed that ocean carriers were being penalized under section 584 for discrepancies between the manifest cargo packaged in a manner which prevents the master from knowing its contents. For example, cargo containers are often filled at the exporter's factory in a foreign country and the container is not opened again until it reaches the importer's facility inside the United States.

It was anticipated that the prepenalty notice procedure would enable carriers to resolve quickly possible violations before a penalty notice is issued, and since the notice would go to all persons directly or indirectly responsible for the error, importers, exporters, brokers, and carriers would cooperate in reconciling problems. However, in actual practice the prepenalty notice has been of no tangible benefit either to importers, carriers, brokers, or to the Customs Service. Inasmuch as the violations of this requirement do not involve serious offenses, they can be handled adequately through normal penalty procedures, with a substantial reduction in both paperwork and administrative expense.

Section 119. Penalties for unlawful unlading and transshipment

Section 119 of the bill increases the civil and criminal penalties for unlawful unlading or transshipment. Currently, the penalties for such offenses are set at not less than $1,000 and imprisonment of not more than two years. This provision would increase the penalties to not more than $10,000 and imprisonment for not more than 15 years.

In addition, the geographical limits of the statute are changed from 12 miles to "customs waters," which term means "12 miles" or the distance permitted by treaty or special arrangement with a foreign country for the boarding of vessels flying its flag.

Section 120. Aviation smuggling

Section 120 of the bill adds a new section 590 to the Tariff Act which is intended to control aviation smuggling by adopting many of the provisions contained in 19 U.S.C. 1586 and the Anti-Smuggling Act of 1935 which currently apply to vessels. In addition, this section is intended to address a relatively new phenomena, air drops of contraband to vessels in international waters. The statute addresses these problems as follows:

Subsection (a) of new section 590 makes it unlawful for any person to possess merchandise knowing or intending that it be unlawfully introduced into the United States or its territories or possessions or within 12 miles of the coast. Subsection (b) makes it un-

lawful to transfer any merchandise between an aircraft and a vessel on the high seas or within customs waters if the plane or boat is of U.S. nationality or the circumstances indicate the purpose is to introduce the merchandise contrary to law unless the transfer has been authorized by the Secretary of the Treasury.

The new provision also provides for civil and criminal penalties and civil forfeiture. It is the Committee's intent, however, that relief from forfeiture, provided for in subsection (f), should be granted by the Customs Service where the owner exercised reasonably prudent business caution to prevent illegal use of the vessel or aircraft owned. In the case of aircraft leasing, this would entail such precautions as requiring identification and credit cards from prospective renters, inquiring as to the purposes of the rental, and notifying Customs if there are frequent rentals under suspicious circumstances.

Subsection (g) contains certain rebuttable presumptions of an intent to unlawfully transship merchandise. These presumptions expand on the presumptions contained in the Anti-Smuggling Act of 1935. Customs and other law enforcement officers often discover suspicious aircraft or vessels wihout contraband on board, but under circumstances indicating they were used or intended to be used for unlawful purposes, such as smuggling. The presumptions contained in subsection (g) would have the effect of shifting the burden of proof to the claimant of seized property. Thus, for example, the claimant would have to explain why his aircraft had illegally installed fuel tanks, or false registration markings. These are similar to the presumptions presently contained in 19 U.S.C. 1703.

Section 121. Seizures

Section 121 of the bill amends section 594 of the Tariff Act to eliminate the expensive and time-consuming requirement that conveyances seized to secure payment of penalties (not for forfeiture) be proceeded against in an admiralty court action and would substitute the normal Customs forfeiture procedures which permit administrative forfeiture in many instances. The provision would continue to protect the rights of individuals, however, by requiring court proceedings whenever a claim and cost bond are posted.

In addition, the exemptions from seizure of common carriers are being revised. Under present law a common carrier may not be seize or forfeited for violations of the customs laws unless the owner or master or other person in charge consented to or were privy to the violation. This protection was given to protect the common carrier from seizures where dishonest passengers concealed contraband in baggage or otherwise violated the customs laws or where a dishonest shipper misdescribed the contents of cargo on a bill of lading. However, in recent years, common carriers in increasing and alarming numbers have escaped seizure where large quantities of drugs were concealed on board the vessel or aircraft, outside the cargo, by crew members or other personnel employed by common carriers. In addition, common carriers have escaped liability where 2,500–3,000 pounds of cocaine were placed in *unmanifested or falsely manifested* cargo boxes or containers. A simple comparison of the bill of lading with the external marks on

the cartons or an actual external count of the cargo by the carrier would have revealed these discrepancies.

This section continues protection for common carriers where contraband is contained on the person of a passenger, in the baggage of a passenger being lawfully transported, or in manifested cargo with external marks and quantities which match the bill of lading, unless the owner, operator, or person in charge participated in or had knowledge of the violation or was grossly negligent in preventing or discovering the violation. However, in the case of merchandise the importation of which is prohibited, such as controlled substances, common carriers would be subject to seizure for transporting such items in unmanifested cargo, in cargo whose external character did not match the documents or for articles concealed on the conveyance, but outside the cargo. After investigation, the common carrier would be subject to forfeiture unless the owner or operator, master, pilot, or any other employee responsible for maintaining and insuring the accuracy of the cargo manifest can show that they did not know and through the exercise of the highest degree of case and diligence could not have known that the contraband was on board. This standard is identical to the standard contained in 19 U.S.C. 1584 for common carrier penalties for unmanifested drugs and is intended to encourage greater vigilance by common carriers. Of course, common carriers can avail themselves of the remission and mitigation procedure in 19 U.S.C. 1618.

Subsection (d) defines "owner or operator," "master," and similar terms relating to the person in charge to include responsible managerial and supervisory personnel to reflect modern practices relating to cargo manifests. The Committee recognizes that anybody involved in manifesting cargo has a responsibility to see that the manifest is checked and accurate. There are cases, however, when the owner, operator, or master have no reason to know and could not prevent an internal conspiracy even through the exercise of the highest degree of care and diligence. The Committee intends for Customs to exercise relief from forfeiture in such cases where it can be demonstrated that the owner/operator exercised such care. Subsection (e) makes the carrier responsible for expenses arising, out of seizures under subsection (c) which relate to discoverable, unmanifested drugs and prohibited merchandise in those cases where it is determined that a violation of such subsection has occurred.

Section 122. Searches and seizures

Section 122 of the bill expands the Customs civil search and seizure warrant in section 595 of the Tariff Act (19 U.S.C. 1595) to cover any article subject to forfeiture as well as any document, container, wrapping, or other article which is evidence of a violation of any law enforced by Customs in addition to the imported merchandise which is currently subject to such warrants.

Once again, the Committee feels it is necessary to balance the expansion of Customs' law enforcement capabilities by broadening the application of the civil search and seizure warrant with a concern expressed by the business community that such an expansion could be used by Customs to harrass legitimate businesses. Therefore, in order to preclude the application of this provision to negli-

gence cases under section 592 of this Act, it is specified that in case of violations of that section, Customs may obtain a warrant with respect to documents or other articles which is evidence of a violation of section 592 only if there is probable cause to believe fraud is involved. Finally, the obsolete reference to U.S. Commissioner is changed to Federal Magistrate.

Section 123. Forfeitures

Section 123 of the bill amends section 596 of the Tariff Act (19 U.S.C. 1595a) to permit the civil seizure and forfeiture of merchandise introduced or attempted to be introduced contrary to law (other than in violation of section 592). This provision is intended to fill a gap which was caused when former section 593 was moved in 1948 to the criminal code as 18 U.S.C. 545. In addition, although section 592 permits the seizure of prohibited goods, this is in some cases unsatisfactory. While it is true that most laws which restrict or prohibit merchandise provide for forfeiture, some such as the motor vehicle laws and coffee laws merely deem the goods to be a "prohibited importation" but do not provide for a separate forfeiture.

Consistent with the limitation made in section 122 with regard to search and seizure warrants, this provision would not apply to alleged violations of section 592 which already provides for seizure and forfeiture under appropriate circumstances. It is the Committee's intention, however, that the provision would allow seizure and forfeiture in those cases where merchandise has been imported contrary to laws other than section 592 even if the importation is also a violation of section 592.

Section 124. Disposition of proceeds of forfeited property

Section 124 of the bill amends section 613 of the Tariff Act to treat amounts tendered in lieu of merchandise subject to forfeiture in the same manner as the proceeds of sale. This would permit the Secretary or his designee to grant relief from the forfeiture in certain instances but would still permit the deposited funds to be used to pay expenses of the seizure and to be placed in the Forfeiture Fund to be used for the same purposes for which forfeiture proceeds may be used. In addition, section 613(d) would treat agency seizure expenses in the same manner as court costs and marshal's expenses. A recent court decision held that only seizure expenses incurred by the *custodia legis* after a complaint is filed are priority claims. Thus, under this interpretation, agency expenses incurred prior to referral for judicial proceedings would not be paid in some instances where the proceeds of sale are insufficient to cover preferred mortgage liens and all the expenses incurred by the seizing and custodial agencies. The amendment would remedy the situation by putting agency expenditures on an equal footing with marshal fees and court costs and allow them to be paid before liens.

Section 125. Compensation to informers

Section 125 of the bill amends section 619 to allow Customs officers to exercise some discretion in determining the percentage of an informants' award. Under present law, when Customs makes a recovery of property, or penalties, the person who provided the

original information is entitled to an award of 25 percent of the recovered value, but not more than $250,000 (until 1984, this was $50,000). The amendment would permit an award in a lesser amount *up to* the 25 percent/$250,000 maximum depending on the information provided. The amendment also deletes a requirement which was contained in Public Law 98–473, requiring the Commissioner to approve any award in excess of $10,000. Prior to Public Law 98–473, the maximum award was $50,000 which could have been approved by subordinate officials. The award is only payable after the government has made a recovery based on the information supplied by the informant. The officer receiving the information and the District Director where the recovery was made must both approve any claim. In addition, headquarters attorneys in both the Offices of Regulations and Rulings and Chief Counsel must review all awards before payment is approved. With these "checks and balances," the Committee believes that the personal approval of the Commissioner is unnecessary.

Also in section 125 is a provision to treat informants awards in the same manner as expenses. Thus, the informant's award may be deducted from the proceeds, prior to depositing them in the Customs Forfeiture Fund (in the case of forfeitures) or the General Fund (in the case of fines and penalties).

Finally, section 125 of the bill allows the Secretary of the Treasury to grant rewards to informers regardless of whether duties, fines, or penalties can be levied and regardless if any property is forfeited. Present law permits rewards in situations where customs duties are recouped or property is seized. The reward is then based on the duties and penalties received by the Treasury or the value of the seized property. Under this section, rewards can be made at the Secretary's discretion. Thus, they can be based on the value of information received or the quantity of drugs or other contraband that is kept out of the country.

Section 126. Commencement of actions

Section 126 of the bill clarifies the statute of limitations provisions contained in section 621 so that monetary penalty cases are deemed to have been commenced when the penalty notice is issued. Customs cases, especially those involving fraud are often difficult to detect. Once discovered, they must be investigated. Frequently, one discovery leads to others and companion civil and criminal cases are pursued. During the criminal case, which has a shorter statute of limitations, grand jury information is not generally available to civil investigators. In addition, alleged violators generally do not wish to respond to civil penalty cases while a criminal investigation is being actively pursued. Under present law, the civil statute of limitations is not tolled until a court action is filed. The amendment would toll the civil statute when the penalty is issued.

Section 127. Foreign landing certificates

Section 127 of the bill amends section 622 of the Tariff Act to permit the Secretary of the Treasury to require landing certificates to comply with international obligations such as bilateral or multilateral agreements to reduce or prevent smuggling.

Section 128. Exchange of information with foreign agencies

Section 128 of the bill clarifies the Secretary's authority to exchange information with foreign customs and law enforcement authorities. Such exchanges are necessary to determine whether voluntary quotas and other cooperative arrangements are working as intended. Exchanges are also necessary to verify information on import and export documents and to comply with bilateral and multilateral obligations. In addition, the new section 628 would permit U.S. authorities to exchange information with foreign officials when such exchanges are necessary to assist in U.S. investigations or judicial or quasi-judicial proceedings. Frequently, foreign authorities have information which would be valuable in a U.S. investigation but are reluctant to provide the information unless U.S. authorities can also provide information.

In the Committee's deliberations on this provision, a concern was raised by the business community that this provision would authorize the Secretary to provide commercial business information which was submitted in confidence to foreign government agencies which, in turn, could make such information available to its foreign competitors. In order to prevent this from happening, the Secretary is directed, before providing any information to a foreign government, to obtain assurances that the information provided will be kept in strict confidence and that it will be used solely for the law enforcement purpose for which it was intended. Countries that violate such assurances should not be the beneficiaries of subsequent exchanges.

Finally, some concern has been expressed that this provision may somehow undermine the current division of authority between the Drug Enforcement Administration and the U.S. Customs Service. This is not the Committee's intention, however. This provision is based on draft legislation submitted to the Congress on behalf of the Administration by the Department of the Treasury. In its transmittal letter, the Department said:

> To the extent that this bill concerns drug law enforcement, it is, like section 320 of P.L. 98-473 and section 213(a)(17) of P.L. 98-573 intended to strengthen the ability of the Customs Service to carry out its existing drug enforcement functions in its assigned geographic areas of responsibility. The division of domestic and foreign drug enforcement jurisdiction among the various federal agencies is set out in Executive Order 11727 and Reorganization Plan No. 2 of 1973 and nothing herein is intended to alter those allocations of responsibility.

Section 129. Inspections and preclearance in foreign countries

Section 129 of the bill grants the Secretary specific authority to operate customs facilities in foreign countries. The new section 629 gives the Secretary the authority to extend U.S. customs laws to foreign locations (with the consent of the country concerned). Although U.S. officials have been at air preclearance locations in Canada, Bahamas, and Bermuda since the 1950's, their presence has never been specifically authorized by statute, nor have they had the law enforcement tools necessary to properly perform their

jobs. This section would also provide for the reciprocal stationing of foreign customs officers in the United States. This would permit the U.S. and Canada to build and operate single border stations serving both countries to effectuate economies on both sides. The Committee understands that the proposed Canadian Customs Act has similar provisions.

Section 130. Investigations; oath; subpenas; etc.

Section 130 of the bill amends the administrative subpoena authority of Customs, to delete reference to the controlled substances laws and substitutes reference to currency reporting laws. This provision would expand the investigative tools available to customs officers. Since the subpoena authority would not relate solely to narcotic investigations, it is being moved to title 19 as a new section 631 of the Tariff Act. Because of its present wording, the provision has remained virtually unused since the 1973 Reorganization Plan transferred most drug investigation authority from the Department of the Treasury to the Department of Justice. The courts would also have the authority to assess the costs of enforcement proceedings against a person who improperly refuses to comply with a subpoena issued under this section.

Section 131. Undercover investigative operations of the Customs Service

Section 131 of the bill makes it clear that the Secretary of the Treasury is authorized to utilize commerical "cover" corporations, bank accounts, and to lease property and pay for services without complying with the normal requiremetns which would reveal government involvement when such activities are needed in authorized investigative activities. Many of the larger smuggling, export, and currency investigations require Customs special agents and other officers to assume commerical "cover" identities and set up "cover" operations. At present Customs officers must often rely on the utilization of "cover" corporations and businesses established by local and State (or other Federal) enforcement agencies. This has proven awkward and in some cases may actually compromise the investigation. In addition, section 131 makes it clear that the usual laws governing bank deposits and space rentals do not apply in such undercover situations. The Committee has worked with the Committee on the Judiciary to insure that the proposed authority parallels the authority of other Federal law enforcment authorities such as the Drug Enforcement Administration and the Federal Bureau of Investigations.

Section 132. Effective date

Section 132 of the bill provides that amendments made by this subtitle will take effect the fifteenth day after enactment and that civil or criminal fines set forth in Subtitle B will apply only to violations committed on or after such fifteenth day.

Subtitle C—Customs Forfeiture Fund

Section 141. Customs forfeiture fund

Section 141 of the bill amends section 613A to extend the operation of the Customs Forfeiture Fund until September 30, 1991. This section also expands the list of expenses which can be paid for out of the Fund. While section 141 allows investigative costs leading up to seizures to be covered, the Committee does not intend for the Fund to be used to finance undercover operations. The second type of expense which section 141 adds is the cost of equipping for law enforcement functions any vessels, vehicles, and aircraft in Customs' possession. Previously, section 613A allowed only equipping of forfeited vessels, vehicles, and aircraft.

The last two types of expenses allowed by section 141 are the reimbursement of private citizens for expenses incurred in cooperation with the Customs Service in investigations and undercover law enforcement operations and publicizing the availability of rewards under section 1619 of this title. The purpose of allowing these expenses is to create and promote an active reward system which will encourage individuals with a working knowledge of air and sea ports to participate to the fullest extent possible in protecting our borders.

Section 141 also increases the authorized annual ceiling on appropriations from the Fund to $20 million and provides for amounts collected in excess of $20 million to be deposited in the general fund of the Treasury on an annual basis.

TITLE II—CUSTOMS SERVICE AUTHORIZATIONS, MISCELLANEOUS CUSTOMS PROVISIONS, AND AMENDMENTS TO THE CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT

Subtitle A—Customs Service Authorization

Section 201. Authorization of appropriations for fiscal year 1987 for the United States Customs Service

Section 201 of the bill provides for an authorization of appropriations for the U.S. Customs Service for fiscal year 1987 of $1,145,131,000, of which $296,700,000 is for the operation of the Air Interdiction Program. This authorization level was arrived at by starting with a level necessary to maintain current operating levels ($749.1 million for salaries and expenses and $77.2 million for the operation of the air interdiction program) and adding $318.8 million ($99.3 million in salaries and expenses for additional personnel and $219.5 million for the air program) dedicated to strengthening Customs Service to expend these funds in the following manner:

	Millions
Salaries and expenses (over fiscal year 1986):	
Personnel:	
329 positions—air program (including 67 for communications centers)	$20.0
100 positions for the marine program	6.0
400 positions for Southwest border drug enforcement	20.0
30 positions for Headquarters Air Staff	1.5

20 positions for Headquarters Marine Staff	1.0
Subtotal, salaries	48.5
Expenses:	
Voice privacy and HF single sideband secure radios	40.0
Drug enforcement vehicles (1,800, including 300 new and 1,500 replacement)	1.8
Electronic and acoustic sensors and transponders, for air and marine interdiction	1.0
Marine interdiction:	
10 utility boats	2.0
30 interceptor boats	2.0
Training for new air and marine positions at Federal Law Enforcement Training Center, Glynco, GA	4.0
Subtotal, equipment	50.8
Total S&E	99.3
Operations and maintenance, Air Interdiction Program:	
Command, Control, Communications and Intelligence Centers (Sector Operations Centers located at Miami, FL; Houston, TX; and March AFB, CA; and one National Center in Oklahoma City, OK)	87.0
4 mobile airborne radar surveillance aircraft with each having a 360° simultaneous surface and air surveillance capability	82.5
8 high endurance tracker aircraft with APG–66 radar and FLIR	40.0
2 high-speed interceptor jet aircraft	10.0
Total O&M	219.5
Grand total	318.8

The Committee strongly believes that this authorization level is essential in order for Customs to carry out an effective narcotics interdiction program. Success in the air interdiction mission requires that Customs be able to: (1) *detect* incoming aircraft, (2) *intercept* those targets, and (3) *arrest* the traffickers. Customs can do none of these functions reliably anywhere in the country. According to testimony received by this Committee from the Chairman of the Subcommittee on Government Information, Justice, and Agriculture of the Committee on Government Operations, which has studied this matter intensely over the last five years:

—In the entire Customs national inventory there are only 6 interceptor aircraft which meet their own standards of adequacy. There are only 8 helicopters for the entire Nation.

—Sixty-two percent of the cocaine entering the United States arrives in small, private aircraft. With responsibility to interdict these aircraft, Customs operates 8 air interdiction support branches. On average, these branches function today at an 8-hour-per-day, 5-day-per-week level of operations.

—Customs has testified that it requires a minimum of 650 people in its air interdiction program to operate the air branches on a 16-hour-per-day, 7-day-per-week basis. It has only 271 people in this program today. (They are authorized 388 positions, but have 117 vacancies.) Even if they attain this goal, 16-hours-per-day, it still leaves the borders of this country unguarded one-third of the time.

—There are vast sections of the southwest border, including the Big Bend area of Texas, where *no* radars (to include NORAD and FAA) can see aircraft operating below 14,000 feet.

—There has not been an Administration request for new assets in the Customs marine interdiction program for the past 10 years. Last year, the Congress provided the Customs Service 40 additional pursuit boats for drug interdiction operations. There are not sufficient personnel to operate the new equipment.
—On the entire west coast of the United States, from San Diego to Seattle, Customs has only 8 boats which meet their own operational specifications. Most of these cannot operate on the high seas, and are only used for harbor patrol.
—Despite the speed with which Customs must respond during air chases, there is no coherent command and control capability within the Customs Service. Their aircraft cannot routinely communicate with their boats and cars. Their boats cannot communicate with each other beyond a range of five miles.
—The radios of the Customs Service, Coast Guard, and Drug Enforcement Administration are not compatible. They cannot communicate with each other on a routine basis, and almost never in a secure mode. The Committee is aware of a 64-page listing of every law enforcement and military radio frequency in the southeast. The list was seized from a drug trafficker who easily monitored these enforcement agencies as he conducted his smuggling ventures.

It is the intent of the Committee that none of the funds authorized in this bill for aircraft, communications enhancements, and command, control, communications, and intelligence centers for the air interdiction program of the Customs Service shall be appropriated for any of these resources until the National Drug Enforcement Policy Board, or other agency or individual that may later be designated as responsible for the Nation's development of resources for drug interdiction, determines and approves each of the specific assets to be procured. If such assets are found to be more suitably placed under an agency other than Customs, necessary funds will be transferred from the total authorized in this bill.

The authorization level in section 201 of the bill also includes such sums as may be necessary to complete the testing of the prototype of the automatic license plate reader program and to begin implementation of that program. The Committee feels this program would enhance the ability of Customs to prevent drug smuggling and other illegal activity at the border.

In response to an operational requirement for more rapid and efficient processing of vehicles along the southwest border, Customs established a research and development project for an automated license plate reader. The system, developed by a contractor in Knoxville, Tennessee, uses optical character recognition techniques, a high resolution and automatically shuttered television camera, and a microcomputer with associated software and hardware to read and maintain license plate data (State and number).

Upon successful completion of the feasibility study of the prototype in an operational field environment, Customs plans to install the system at major ports. Initial field testing at San Ysidro, California, was completed in February 1986. After modifications are made to provide a faster reading system and to make the equipment more compact, the system will be tested again beginning in November 1986.

The Office of Inspection and Control in the Customs Service feels that the automated license plate reader system is a positive development which will be of assistance in both law enforcement and facilitation efforts. President Reagan viewed a prototype demonstration at the University of Tennessee in the fall of 1985 and encouraged continuation of the program.

Customs feels that a permanent unit could be built based on the advanced prototype with a few minor modifications. It is estimated that "on-line" units could read 90–95 percent of all license plates passing the system. Among the benefits of the system is that processing time per vehicle that clears Customs should be reduced by 15–20 percent as the system reads plates and enters data automatically. Also, the system alerts the inspector if a license plate number cannot be read. This "double-check" on difficult-to-read plates will result in more accurate archives records. These archives records are frequently used in court cases against drug couriers when they are caught after crossing the border. So-called "port-runners," many of whom are suspected narcotics or alien smugglers, will be more easily apprehended and convicted.

Subtitle B—Miscellaneous Customs Amendments

Section 211. Treatment of hovering vessels

Section 211 of the bill amends the reporting laws so that vessels receiving merchandise from aircraft or other vessels on the high seas or in customs waters would be treated in the same manner as vessels which visit hovering vessels or foreign countries. They would have to report their arrival and make formal entry.

Section 212. Recreational vessel licenses

Section 212 of the bill amends the documentation laws to make it clear that while documented yachts do not have to make formal entry they must report their arrival to Customs and declare any goods on board. Recent changes to the language in the documentation laws have led to some confusion with some private yacht owners believing that they were exempt from all customs regulations. In fact, they are only exempt from formal entry and clearance procedures.

Section 213. Assistance for customs officers

Section 213 of the bill amends 19 U.S.C. 507 which customs officers use to request the assistance of others by eliminating references to a 3-mile distance and by raising the criminal penalties for failure to render assistance. Customs officers must frequently rely on assistance by State and local agencies and civilians in performing their duties. For example, suspect planes picked up on radar may land before customs officers can arrive. Local police or airport authorities are frequently called upon and asked to detain the pilot and passengers until Customs can arrive.

A civilian may be called upon to assist, for example, in a body search when the person apprehended is of the same gender as the civilian, in cases where no customs personnel of that gender are available. The civilian called upon should be trained or have some familiarity with the procedure in which they are being asked to

participate. In the example above, a doctor, medical attendant, or airline attendant trained to perform body searches are examples of appropriate civilian personnel. The Committee intends that "reasonable excuse" be interpreted broadly in the case of civilians so that persons not be required to assist in ways which are dangerous to their personal safety, are repugnant to perform, or for which they have little chance of performing satisfactorily.

Subsection (b) provides immunity to persons other than Federal employees assisting customs officers in good faith. This provision is based on various "good samaritan" laws and is intended to reassure individuals who are unsure of their liability for coming to the aid of Federal officials. The liability of Federal employees will continue to be governed by existing case law, which permits qualified immunity defense to a Federal official who was acting in good faith with a reasonable belief in the validity of his/her action. See *Bivens* v. *Six Unknown Named Agents*, 456 F.2d 1339 (2d Cir. 1972).

Subtitle C—Amendments to the Controlled Substances Import and Export Act

Section 221. Possession, manufacture, or distribution for purposes of unlawful importation

Section 221 of the bill amends 21 U.S.C. 959 to make it unlawful for a U.S. citizen or any person aboard a U.S. aircraft to possess controlled substances with an intent to manufacture or distribute, or for any person aboard an aircraft to possess with an intent to manufacture or distribute a controlled substance knowing or intending that it be unlawfuly introduced into the United States or within a distance of 12 miles from the coast. These provisions are complimentary to proposed section 590 of the Tariff Act and 21 U.S.C. 955a and close certain gaps in the law as it relates to aircraft.

Sections 222–226. Penalties for drug traffickers

Sections 222–226 of the bill make a number of amendments to the Controlled Substances Import and Export Act to significantly stiffen the applicable penalties and reduce the actionable quantities of narcotics in import-related drug trafficking cases. These amendments, which are in this Committee's jurisdiction, were worked out with the Committee on the Judiciary and are consistent with the amendments made by that Committee for other drug trafficking offenses.

The penalties that are set forth in these provisions are quite severe, such as in the case of a second or subsequent offense under section 1010(b)(1) of the Controlled Substances Import and Export Act, which provides for imprisonment of not less than 20 years to imprisonment for life, and a fine of not more than $4 million or both in the case of an individual or a fine of not more than $10 million in the case of a person other than an individual. That Committee believes that such stringent penalties are necessary in order to act as a strong deterrent to the drug trafficking trade.

TITLE III—DENIAL OF TRADE BENEFITS TO UNCOOPERATIVE DRUG SOURCE NATIONS

The Committee believes that in order to be successful in winning the war on drugs, the problem must be attacked at its source. This requires a cooperative effort between the United States and known drug supplying nations to work toward the eradication of narcotic crops and clamping down on manufacturers of narcotic and psychotropic drugs and other controlled substances. Title III gives the President the necessary tools to encourage uncooperative drug source nations to work with the United States to reduce drug production on a large scale.

Section 301. Short title

Section 301 of the bill provides that Title III may be cited as the Narcotics Control Trade Act.

Section 302. Determinations regarding uncooperative drug source nations

Section 302 of the bill requires that the President determine annually whether any country:

(a) is a direct or indirect source of illicit drugs; and

(b) has not cooperated with the United States Government to prevent these illicit drugs from significantly affecting the United States.

In making his determination, the President is required to take into account the capabilities, effort, and progress made in such country in several areas, including limiting and controlling legal narcotic crop production, detecting and eradicating the illicit cultivation of narcotic crops and suppressing illegal drug manufacturing and trafficking.

The President is required to submit an annual report to the Congress regarding any country for which an affirmative determination has been made.

Section 303. Tariff treatment of products of uncooperative drug source nations

Section 303 of the bill requires the President to take action against countries for which an affirmative determination has been made under section 302. The action may include:

(a) denial of GSP benefits on any or all eligible products;

(b) denial of CBI benefits on any or all eligible products;

(c) increased duties of up to 50 percent above column 2 rates on any or all products of such country; or

(d) a combination of any of these actions.

While this section allows some flexibility and discretion in the type of action taken by the President, it is the Committee's intent to require the President to take significant and meaningful action sufficient to encourage cooperation from the offending country when an affirmative determination has been made with respect to such country.

Section 304. Progress reports

Section 304 provides that the President shall include as part of the annual report required under section 481(e)(1) of the Foreign Assistance Act of 1961, an evaluation of the efforts being made by the governments in principal drug supplying countries to cooperate with the United States and the extent to which it is achieving the objectives set forth in section 302(b). The report will include all principal drug supplying countries, whether or not an affirmative determination has been made under section 302(a). It is the Committee's belief that the major drug producing countries which should be included in the report are: Peru, Bolivia, Colombia, Jamaica, Belize, Mexico, Pakistan, Afghanistan, Iran, Turkey, Lebanon, Burma, Thailand, Laos, Morocco, and any other country which the President finds to be a principal drug supplying country.

Section 305. Cancellation of determinations

Section 305 of the bill requires the President to cancel the determination made under section 302(a) prior to restoration of column 1 rates of duty or preferential tariff treatment.

Section 306. Definition

Section 306 of the bill defines "narcotic and psychotropic drugs and other controlled substances" as in the Foreign Assistance Act of 1961.

Section 307. Conforming amendments

Section 307 of the bill makes conforming amendments to section 502(b) of the Trade Act of 1974 and section 212(b) of the Caribbean Basin Economic Recovery Act.

VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the committee in reporting the bill. H.R. 5410 was ordered favorably reported by the Committee by a voice vote

OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives relating to oversight findings, the Committee has concluded that the enactment of H.R. 5410 will significantly improve the U.S. Customs Service's capabilities to carry out their narcotic interdiction responsibilities and give the President the necessary tools to gain the cooperation of foreign drug source nations to help eradicate the production of such drugs.

With respect to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been submitted to the Committee by the Committee on Government Operations with respect to the subject matter contained in this bill. The Chairman of the Subcommittee on Government Information, Justice, and Agriculture of that Committee provided testimony and other assistance to the Committee on Ways and Means in the formulation of H.R. 5410.

BUDGETARY AUTHORITY AND COST ESTIMATES, INCLUDING ESTIMATES OF CONGRESSIONAL BUDGET OFFICE

In compliance with clause 7(a) of rule XIII and clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 5410 does not provide any new budget authority or any significant additional tax expenditures.

In compliance with clause 7(a) of rule XIII and clause 2(l)(3)(B) and (C) of rule X of the Rules of the House of Representatives, the Committee provides below information furnished by the Congressional Budget Office of H.R. 5410 and required to be included herein:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 14, 1986.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 5410, the International Drug Traffic Enforcement Act of 1986.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

EDWARD GRAMLICH
(For Rudolph G. Penner).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 5410.
2. Bill title: International Drug Traffic Enforcement Act of 1986.
3. Bill status: As ordered reported by the House Committee on Ways and Means, August 7, 1986.
4. Bill purpose: Title I of the bill would amend the Tariff Act of 1930. The bill would prohibit the importation of drug paraphernalia, include "monetary instruments" and "controlled substances" as items covered by the act, change the reporting procedures for incoming vessels, increase criminal penalties for customs violations, require that pedestrians cross the border only at approved crossings, and change marine and aviation anti-smuggling laws to close existing loopholes and clarify existing provisions.

Title I of the bill would also extend the authorization for the Customs Forfeiture Fund. Under current law, the fund's authorization, set at $10 million for fiscal year 1987, would expire at the end of that year. H.R. 5410 would authorize the appropriation of up to $20 million from fund receipts for 1987 and for each fiscal year thereafter through 1991. The bill would also allow appropriations to the fund to be expended for additional purposes such as equipping vehicles for the Customs Service, purchasing evidence, and reimbursing citizens for expenses associated with Customs Service investigations.

Title II of the bill would authorize appropriations for the Customs Service for fiscal year 1987. In total, Title II authorizes $1,145

million, which includes $848 million for salaries and expenses and $297 million for the air interdiction program (AIP). The 1986 budget authority is currently $717 million for salaries and expenses and $75 million for AIP, after sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985 and supplemental appropriations provided by Public Law 99-349. The President has requested 1987 funding of $693 million for salaries and expenses and $55 million for AIP. H.R. 5410 specifies that $99 million of the Customs Service funding be used for additional drug enforcement personnel; the bill also specifies that $220 million of AIP funding be allocated for purchases of additional equipment.

H.R. 5410 would impose and increase various criminal and civil penalties relating to international drug traffic violations. In addition, Title III would require the President to identify "uncooperative drug source nations" based on criteria contained in the bill. Such nations would no longer be allowed to receive preferential tariff treatment on products exported to the United States.

5. Estimated cost to the Federal Government:

(By fiscal years, in millions of dollars)

	1987	1988	1989	1990	1991
Customs Forfeiture Fund:					
Estimated authorization level	10	12	12	12	12
Estimated outlays	10	12	12	12	12
Customs Service salaries and expenses:					
Authorization level	848				
Estimated outlays	752	96			
AIP operations:					
Authorization level	297				
Estimated outlays	160	74	37	13	13
Total:					
Estimated authorization level	1,155	12	12	12	12
Estimated outlays	922	182	49	25	25

The costs of this bill fall within budget functions 750 and 800.

Basis of estimate: In general CBO assumes that the bill will be enacted before the end of fiscal year 1986 and that the full amounts authorized will be appropriated for 1987. The estimated outlays for activities authorized under current law are based on historical spending patterns. Other outlay estimates are discussed below.

H.R. 5410 authorizes the appropriation of up to $20 million a year to the Customs Service from the receipts that accrue to the Customs Forfeiture Fund. The bill requires that any balance in the fund at the end of a fiscal year be deposited in the general fund of the Treasury. Because appropriations are limited by the amount of receipts in the fund during a year, CBO estimates that after 1987, not more than $12 million could be appropriated for each year, based on projections of future fund receipts and balances. The estimated authorization level of $10 million for 1987 is the amount that the bill would authorize in addition to the $10 million already authorized under current law for 1987. We estimate that the fund bal-

ance will be sufficient to appropriate the entire $20 million that would be authorized for 1987 if H.R. 5410 is enacted.

The estimated outlays for the proposed expansions of the AIP and drug enforcement program are based on information provided by the Customs Service. These funds would cover the costs of approximately 875 additional positions, radar systems, aircraft, boats, radios and electronic sensing devices. A major portion of these funds would cover the costs of expanding the command, control, communications and intelligence centers at four locations.

Because it is uncertain which tariff measures might be implemented under Title III, CBO cannot estimate at this time the revenue effects of these provisions. In addition, CBO does not expect the revenue effects of the criminal and civil penalty provisions in Title I to be substantial.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Michael Sieverts and James Hearn.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

INFLATIONARY IMPACT STATEMENT

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 5410 would not have an inflationary impact on prices and costs in the operation of the general economy.

DISSENTING VIEWS OF HON. PHILIP M. CRANE ON H.R. 5410

On the face of it, H.R. 5410 has a noble purposes: "* * * to respond to the serious problem of illegal drug smuggling and the growing threat to this country from foreign-sourced drug production."

I certainly agree with that purpose and I would like to agree that H.R. 5410 achieves it. But I know that is not the case. The bill does not go far enough in some directions, and it goes too far in others!

There is no doubt in my mind that illegal drug trafficking is, indeed, posing grave consequences for the future of our society, especially for our children. However, the dramatic changes contemplated by this bill have budgetary, policy and resource implications that the Committee has not taken adequately into account.

In my view, it is fiscally irresponsible to increase spending, as the bill would do in many ways, without a complete evaluation of how those tax dollars will be used. I am also worried that several provisions, while doing little to actually deter drug smuggling, will stifle legitimate commercial trade.

Coordination and cooperation among the various agencies responsible for drug interdiction is essential in addressing the drug problem effectively, and the Committee made no real effort to encourage this. Establishing similar functions in various agencies, which compete for scarce budgetary resources, will only cripple our collective effort.

For example, the Air Force already is establishing a drug interdiction "air wing" to provide surveillance and detection assistance to drug enforcement authorities. Increasing the authorization for the Customs Service's air program without taking into account existing resources and equipment under the control of DOD and other law enforcement agencies is not appropriate or even sensible during these times of huge budget deficits.

Similarly, HR 5410 would authorize the appropriation of $350,000 for a feasibility study for low-level radar detection. Yet the Committee did not take the time to consult the Department of Defense about similar studies which have been conducted.

I am convinced that duplicating efforts in this manner, and sharply increasing Customs authorization levels, without careful consideration of existing programs and other schools of thought, will not in themselves help apprehend drug traffickers crossing our borders. We need a more well-reasoned, comprehensive approach—one that we can defend, as we defend our citizens against the illicit drug traffic itself.

PHILIP M. CRANE.